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SUBJECT: DEMARCHE REQUEST ON UN TRUST FUND SUPPORTING THE  
INITIATIVES OF THE CONTACT GROUP ON PIRACY

(SBU) 1. This is an action request. USUN is instructed to demarche UN officials as appropriate on the proposed changes to the terms of reference for the International Trust Fund Supporting the Initiatives of the Contact Group on Piracy off the Coast of Somalia (CGPCS). At its discretion, USUN may wish to make this demarche jointly with Germany, which has done much of the heavy work on this issue; in any case, please consult/inform the German Mission. Post may draw from the points in paragraph three.

(SBU) 2. Background: In order to develop a funding mechanism for the initiatives of the Contact Group on Piracy off the Coast of Somalia (CGPCS), the participants of the CGPCS, led by Germany and with active involvement by the United States, negotiated Terms of Reference (TOR) for a UN Trust Fund in 2009. The Trust Fund TOR was designed to provide industry groups a means of contributing to counter-piracy efforts, and emphasized the importance of funding prosecution-related efforts. Throughout the negotiations, the UN and the CGPCS participants agreed that the Trust Fund's Board, on which several UN agencies would serve as non-voting members, would make the decisions about which proposals would be funded and which would be given priority. When the CGPCS plenary adopted the TOR at its plenary in September 2009, the CGPCS Chair authorized the UN to establish the Fund according to those Terms. The UN was not authorized to make substantive changes to the TORs as negotiated and agreed upon by the UN and the CGPCS. The U.S. subsequently pursued and was granted a seat on the Trust Fund Board by decision of the CGPCS participants. After being approved by the Department of Political Affairs and the Office of Drugs and Crime, however, it appears the Terms of Reference have been changed by the UN Controller's office. The U.S. strongly objects to the changes, which on their face, appear to alter the nature of the Trust Fund and its operation in substantive and significant ways.

(SBU) 3. Begin Points:

-- We are very concerned that, less than two weeks before the Board was scheduled to convene for the first time and consider its first proposals, the UN Controller has proposed what appear to be substantive changes to the Terms of Reference, as agreed to by the CGPCS participants and the UN following many months of negotiations.

-- The UN Department of Political Affairs (DPA) has represented from the beginning of this process that the Board would make the final decisions about how the Fund will be spent, including which projects should be given priority. In addition, at no point did the participants contemplate the UN Secretary General having any sort of approval authority over the selection of Board members as now called for in the revised TORs.

-- It is simply unacceptable to renegotiate these fundamentals, especially at this late stage. We urge you to speak with the UN Controller and explain that the UN has agreed to the substance of these terms and the manner in

which the Fund will operate and any changes to the text at this stage must be limited to purely technical points.

-- The Board cannot begin considering proposal until the Terms of Reference are finalized. We hope the UN is as interested as we are in ensuring this Fund is operational in time for the upcoming, January 28 CGPCS plenary so that the work of supporting important counter-piracy initiatives of the CGPCS may begin without further delay.

If raised:

-- The proposed text is unacceptable to us, but we are open to compromise language that does not change the way the Fund operates, but may serve some internal UN requirements, assuming that is what is driving these last minute changes by the UN Controller. U.S. Government lawyers can work with the UN on any such language, and can be contacted through USUN.

-- If the Terms of Reference as edited by the UN Controller's office are not able to be modified, the U.S. will be unable to accept the new Terms of Reference, and would urge other members of the CGPCS to do the same.

CLINTON